

# **Housing Restructuring (Income-Related Rents) Amendment Bill**

Government Bill

## **Explanatory note**

### *General policy statement*

This Bill is a further step in the implementation of the Government's housing programme, which is designed to address the problems of those in serious housing need. A key component in the government's housing programme is the social allocation of housing provided through Housing New Zealand Limited (HNZ). It is intended that state housing be more affordable and responsive to individual household incomes and need.

The purpose of the Bill is to restore income-related rents to state tenants, and to move the focus of HNZ away from profit and give a greater priority to social assistance. The Bill consequently signals a change from income support as the major form of housing assistance the state provides to those in HNZ housing.

The Bill will amend the Housing Restructuring Act 1992, and the Social Security Act 1964 to—

- remove HNZ's profit objective:
- enable low income HNZ tenants to pay a rent proportional to their income:
- allow for other HNZ tenants to pay rents calculated in accordance with their income up to a market rent:
- ensure that HNZ tenants do not remain eligible for the accommodation supplement and student allowance accommodation benefit:
- abolish the tenure protection allowance:

- provide for various administrative powers necessary to enable the fair and efficient implementation and administration of income-related rents:
- provide transition assistance where required.

### *Summary of key measures*

#### *Principal objective of Housing New Zealand*

HNZ's present principal objective, as stated in section 4 of the principal Act, is inconsistent with the Government's housing policy objectives. Because the move to income-related rents and social allocation reflects a significant change in HNZ's focus, the Government considers it appropriate to amend section 4 so that HNZ's principal objective is to help meet the Crown's social objectives by providing housing and related services in a businesslike manner, rather than simply to operate as a profitable business.

#### *Assessment of income-related rents*

The more technical details of the mechanism by which income-related rents are to be calculated are to be prescribed by regulation.

Matters that can be prescribed include—

- the formulas for calculating income-related rents:
- the threshold at which the percentage of income payable will increase:
- how individual incomes will be assessed:
- the treatment of assets:
- minimum rent levels:
- appeal procedures:
- transition assistance.

But in order to allow informed consideration of what is in fact proposed, the provisions that would otherwise have been in the regulations first made after the passage of the Bill are contained in a proposed new *Schedule 2* of the principal Act (set out in *Schedule 1* of the Bill). These will operate as if they were regulations until the occasion arises for some modification of those details, when regulations superseding the provisions in the schedule will be made.

Together, the provisions contained in proposed new *Part 5* of the principal Act and the schedule allow HNZ to set income-related

rents. The mechanism is based on a calculation that takes into account household composition and after tax income. Those on low incomes will pay no more than 25% of their income on rent. For those whose income exceeds the appropriate set thresholds, their rental will be set fairly according to a formula.

In order to determine an income-related rent, the income of a household will be calculated from the incomes of the signatories to the tenancy agreement and their partners, including same sex partners.

Income issues outlined in the Bill include—

- a definition of items included and excluded in assessable after tax income for the purposes of determining an income-related rent:
- the periods of assessment of income:
- the minimum rental that can be assessed in relation to very low incomes:
- the treatment of income from cash assets:
- deprivation of income and property.

Income-related rentals will be subject to an application by tenants and phased in over a 2-week period commencing on a date to be set by Order in Council.

Not having a fixed implementation date allows some flexibility, and the possibility of implementing the policy earlier than at present planned; but at present it is expected that income-related rents will be phased in over a 2-week period either beginning or ending on 1 December 2000.

There will, however, be a power to backdate late applications (to a date no earlier than that set).

*Removal of all HNZ tenants from eligibility to accommodation supplement and student allowance accommodation benefit*

The Bill removes eligibility for all HNZ tenants to the accommodation supplement under the Social Security Act 1964 and the student allowance accommodation benefit paid under the Student Allowances Regulations 1998. From the introduction of income-related rents, housing assistance will be provided to HNZ tenants via that means, rather than cash benefits.

*Removal of tenure protection allowance*

The “tenure protection allowance” was introduced in 1993 at the same time as the accommodation supplement and was intended to protect HNZ tenants (particularly the elderly) who were living in ‘mismatched’ properties, but where it was considered that it would be inappropriate for them to move to other accommodation. With the reintroduction of income-related rentals, the issue of those on low incomes being able to afford high market rentals (because of the size, the location or other features of the property) no longer arises. Consequently the tenure protection allowance is no longer required. This Bill repeals the sections in the Social Security Act 1964 that provide for the tenure protection allowance.

*Administrative powers*

The Bill provides for the various administrative powers necessary to enable the fair and efficient implementation and administration of income-related rents. These include powers to—

- investigate:
- ask for information from third parties (eg the ability to request and verify income-related information):
- recover the value of any rental rebates inappropriately provided.

*Reimbursement of HNZ*

The Bill makes explicit provision for HNZ to be reimbursed for rental revenue foregone.

*Clause by clause analysis*

*Clause 1* relates to the Bill’s Title.

*Clause 2* relates to the Bill’s commencement. *Clause 7(3)* comes into force 6 months after the rest of *clause 7*. Because its operation is dependent on having a number of new administrative mechanisms in place, the rest of *clause 7* will be brought into force by Order in Council. The rest of the Bill comes into force on the day after assent; but proposed *new section 43* (which provides for the payment of income-related rents by tenants of HNZ housing) and proposed *new section 45* (which relates to notices of changes in rent) are so drafted

that they do not apply until the date specified in the Order in Council (the **appointed day**).

## **Part 1**

### **Principal objective of company, and statement of corporate intent**

*Clause 3* amends section 4 of the principal Act so as to provide that—

- HNZ’s principal objective is to “help meet the Crown’s social objectives by providing housing and related services in a businesslike manner”; and
- to that end it must (among other things) “operate with good financial oversight and stewardship, and efficiently manage its assets and liabilities and the Crown’s investment”.

*Clause 4* amends section 15(3) of the principal Act to require HNZ to include in its statement of corporate intent provisions relating to its exercise of the powers, functions, and discretions conferred by proposed *new Part 5*. This has the effect of also empowering the shareholding Ministers (the Ministers of the Crown who hold all the shares in HNZ) to direct HNZ’s board to include provisions of that kind in that statement.

## **Part 2**

### **Income-related rents**

*Clause 5* adds to the principal Act a *new Part 5*, comprising *sections 42 to 56*.

*New section 42* defines certain terms used in *Part 5*. The definitions of **applicable person**, **calculation mechanism**, and **tenant** are of particular significance.

The tenant of any HNZ housing is the person or people to whom it is let. Every person to whom it is let, and every person who is a partner of a person to whom it is let, is an applicable person. So provisions in the Bill relating to the incomes of applicable persons apply to that larger group of people.

Until regulations are in fact made under *new section 46*, the provisions of *new Schedule 2* are the calculation mechanism. But once regulations are in force, they are the calculation mechanism.

*New section 43* provides for the tenants of HNZ housing to pay income-related rents. In order to qualify to pay an income-related rent, a tenant must have applied to HNZ to have it calculated, and supplied any necessary information.

*New section 44* allows the ability to pay an income-related rent to be backdated in certain circumstances.

*New section 45* provides in detail how changes in rent levels are to be implemented in practice.

*New section 46* is the regulation-making power already referred to. Broadly, it empowers in a non-specific way the making of regulations dealing with all the matters that are dealt with in a specific way in new *Schedule 2*. Thus, for example, the section empowers the making of regulations “prescribing a means for calculating income-related rents for tenants of HNZ housing”, with the particular means proposed being for the moment set out in *Schedule 2*.

*Section 46(3)* is significant. The calculation mechanism (both in its present form in proposed new *Schedule 2* of the principal Act and in the form it is likely to take in any regulations replacing the schedule) makes distinctions between tenants and prospective tenants on the basis of a number of matters relating to them and their partners. For example, *Schedule 2* provides that the income threshold for the calculation of income-related rents at the rate of 50% rather than 25% varies according to whether or not the tenant is “a sole tenant who has no partner and no dependent children”.

It is possible that some of the distinctions now proposed (or intended to be capable of being made in the future) can be categorised as discrimination forbidden by the Human Rights Act 1993. Accordingly, *section 46(3)* overrides that Act by providing expressly that regulations under *section 46* or *section 47* (which empowers the making of regulations for certain transitional purposes) may treat people differently on the basis of their marital status, disability, age, or family status.

*New section 47* provides for the making of regulations enabling the introduction of income related rents to be modified, phased in, or postponed, in particular cases, if it turns out that individual tenants might be disadvantaged by their immediate introduction.

*New section 48* requires tenants paying income-related rents to notify HNZ of any change in their circumstances, or in those of any

other applicable person, that affects the calculation of the rent. A failure to comply is not, of itself, an offence.

*New section 49* gives HNZ powers to review income-related rents.

*New section 50* allows HNZ to investigate the circumstances of applicants for income-related rents and tenants paying income-related rents.

*New section 51* allows HNZ to ask third parties questions about applicants for income-related rents and tenants paying income-related rents (but provides that it is not compulsory to answer the questions).

*New section 52* gives HNZ powers to recover arrears, if it turns out that tenants paying income-related rents have been paying at too low a rate.

*New section 53* provides for the making of regulations giving rights of appeal in respect of decisions taken by HNZ under new *Part 5*.

*New section 54* deals with certain potential problems with the Human Rights Act 1993 that are similar to those dealt with by *section 46(3)*. Because it is intended that HNZ housing should be allocated on the basis of need, HNZ will have to have regard to the characteristics and situations of prospective tenants in deciding which people are eligible to occupy HNZ housing, which of those eligible people should in fact be allocated HNZ housing, and which particular HNZ housing should in fact be allocated to them.

The section enables the criteria on the basis of which these matters are decided to include—

- the marital status, disability, age, or family status of the prospective tenants and their partners:
- the incomes and property of the prospective tenants and their partners:
- whether or not any of the people who would reside in the housing are resident, ordinarily resident, permanently resident, or lawfully resident, in New Zealand.

To that extent, the section overrides the Human Rights Act 1993.

*New section 55* limits the ability of HNZ to delegate its powers under *Part 5*. HNZ is a company under the Companies Act 1993; and section 130(1) of that Act gives companies the ability to delegate their powers to any person. *Section 55* provides that HNZ cannot delegate certain of its powers under *Part 5* except to its

employees and cannot delegate any of the rest of its powers under *Part 5* except to people who are employees or persons engaged under a contract for service.

The section also places limitations on the ability of persons engaged by HNZ under a contract for service to subdelegate powers delegated by HNZ.

*New section 56* provides that the Crown will enter into contracts with HNZ to reimburse it for accepting income-related rents for its housing.

*Clause 6* adds the new *Schedule 2*. The schedule contains the detail of how the income-related rent system will operate.

Tenants will pay an income-related rent that is the lower of the market rent for their housing and the higher of the following sums:

- the sum of—
  - 25% of the household's income, up to a stated threshold; and
  - 50% of any amount by which the household's income exceeds the threshold; and
  - if they are eligible to receive family support, 25% of the lower of the total family support the applicable persons are eligible to receive, and the maximum rate of family support for an eldest dependent child under 16:
- the sum of—
  - 25% of the applicable rate of community wage; and
  - if they are eligible to receive family support, 25% of the lower of the total family support the applicable persons are eligible to receive, and the maximum rate of family support for an eldest dependent child under 16.

The household income of the tenant of any HNZ housing is the sum of the assessable individual incomes of all the applicable persons.

Broadly, the assessable individual income of a particular applicable person (stated as a weekly amount) is the person's annual income after tax, divided by 52. But the schedule states a number of inclusions and exclusions. A person's income includes—

- an income-tested benefit (other than an orphan's benefit or an unsupported child's benefit):
- New Zealand superannuation:
- a veteran's pension:
- a basic grant or independent circumstances grant under the Student Allowances Regulations 1998:
- compensation under the Accident Insurance Act 1998:
- periodical payments, credits, and services, received and used for income-related purposes:
- the value of goods, services, transport, or accommodation (other than HNZ housing) supplied to the person on a regular basis:
- any family tax credit the person is eligible for.

A person's income does not include—

- benefits, allowances, or other payments under the Social Security Act 1964 other than the income-tested benefits expressly included:
- a parental tax credit or child tax credit under the Income Tax Act 1994:
- a number of other kinds of payment stated in paragraph (f) of the definition of **income** in section 3(1) of the Social Security Act 1964.

The schedule also provides for the treatment of applicable persons' **assessable assets** (money invested with a bank or other institution, invested in securities, advanced on mortgage, or invested in shares). An income generated at a rate prescribed by the shareholding Ministers will be imputed to assessable assets; and a tenant's income will be treated as including the higher of the actual and imputed income.

The schedule states the mechanism for estimating an applicable person's weekly income. Income will be estimated by—

- dividing by 52 the person's actual income for a completed period of 52 weeks (or, in appropriate cases, the person's actual income for a shorter completed period, divided so as to equate to a weekly amount); and
- adjusting the result to take into account items by which it is likely to be reduced or increased.

It also provides for the treatment of payments (**contributions**) made to tenants by additional residents (people, like boarders and flatmates, who are not tenants or the partners of tenants, but share housing with tenants). Tenants whose principal source of income is not contributions—

- do not have any contributions taken into account as income if the household has fewer than 3 additional residents:
- do not have the contributions of the 2 additional residents making the greatest contributions taken into account, and have only 62% of the total contributions from other additional residents taken into account, if the household has 3 or more additional residents.

The schedule also allows HNZ to treat an applicable person's assessable income as having been increased, if the person has deprived himself or herself of any income or property, and qualified for a lower income-related rent as a consequence.

*Clause 7* effects consequential amendments and repeals.

---

*Hon Mark Gosche*

# Housing Restructuring (Income-Related Rents) Amendment Bill

Government Bill

## Contents

1	Title	49	Reviews of income-related rents
2	Commencement	50	Investigation of applications, etc
	<b>Part 1</b>	51	Company may seek information
	<b>Principal objective of company, and statement of corporate intent</b>	52	Recovery where rate of rent too low
3	Principal objective of company	53	Rights of appeal
4	Statement of corporate intent	54	Allocation of HNZ housing
	<b>Part 2</b>	55	Delegation of powers under this Part
	<b>Income-related rents</b>	56	Reimbursement of company
5	New Part 5 inserted	6	New Schedule 2 added
	<b>Part 5</b>	7	Consequential amendments, repeals, and revocations
	<b>Income-related rents</b>		
42	Interpretation		<b>Schedule 1</b>
43	Income-related rent		<b>New Schedule 2 of principal Act</b>
44	Backdating		<b>Schedule 2</b>
45	Changes in rent		<b>Enactments amended</b>
46	Calculation mechanism		
47	Regulations for effecting savings and providing for certain transitional matters		
48	Tenant's duty to advise changes of circumstances		

The Parliament of New Zealand enacts as follows:

### 1 Title

- (1) This Act is the Housing Restructuring (Income-Related Rents) Amendment Act **2000**.
- (2) In this Act, the Housing Restructuring Act 1992<sup>1</sup> is called "the principal Act".

<sup>1</sup> 1992 No 76

**2 Commencement**

- (1) **Subsections (1), (2), and (4) to (7) of section 7** come into force on a day appointed by the Governor-General by Order in Council.
- (2) **Section 7(3)** comes into force 6 months after the rest of **section 7**. 5
- (3) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.

**Part 1****Principal objective of company, and statement of corporate intent** 10**3 Principal objective of company**

Section 4 of the principal Act is amended by repealing subsection (1), and substituting the following subsection:

- “(1) The company’s principal objective is to help meet the Crown’s social objectives by providing housing and related services in a businesslike manner, whether in accordance with its statement of corporate intent or pursuant to any agreement made under section 7, and to that end to be an organisation that— 15
- “(a) exhibits a sense of social responsibility by having regard to the interests of the community in which it operates; and 20
- “(b) operates with good financial oversight and stewardship, and efficiently manages its assets and liabilities and the Crown’s investment; and 25
- “(c) is a good employer.”

**4 Statement of corporate intent**

Section 15(3) of the principal Act is amended by inserting, after paragraph (b), the following paragraph:

- “(ba) the exercise by the company of the powers, functions, and discretions conferred by **Part 5** and the calculation mechanism (within the meaning of **section 42**):”. 30

**Part 2**  
**Income-related rents**

**5 New Part 5 inserted**

The principal Act is amended by inserting, after Part IV, the following Part:

5

**“Part 5**  
**“Income-related rents**

**“42 Interpretation**

In this Part and **Schedule 2**, unless the context otherwise requires,—

10

**“applicable person**, in relation to any HNZ housing,—

**“(a)** means every person to whom the housing is or is to be let; and

**“(b)** includes every person who is the partner of such a person

15

**“appointed day** means the day appointed under **section 2(1)** of the Housing Restructuring (Income-Related Rents) Amendment Act **2000** for the commencement of **subsections (1), (2), and (4) to (7) of section 7** of that Act

**“benefits** includes all statutory payments, allowances, credits, and services provided to individuals or families by the Crown, directly or indirectly,—

20

**“(a)** however described; and

**“(b)** whether provided under the Social Security Act 1964, the Income Tax Act 1994, or any other enactment

25

**“calculate** includes ascertain

**“calculation mechanism**,—

**“(a)** before the commencement of the regulations first made under **section 46**, means the provisions of **Schedule 2**; and

**“(b)** after the commencement of those regulations, means the regulations for the time being in force under that section

30

**“HNZ housing** means premises (whether owned by the Crown, the company, or any other person) let by or on behalf of the company for occupation by any person as a place of residence

35

“**income-related rent**, in relation to a tenant, means a rent calculated for the tenant under the calculation mechanism, or under regulations under **section 47**

“**market rent**, in relation to any HNZ housing, means the rent for the time being determined by the company (or the Tenancy Tribunal under the Residential Tenancies Act 1986) as the market rent for that housing 5

“**partner**, in relation to any person, means a person who,—

“(a) either—

“(i) is legally married to that person; or 10

“(ii) in the company’s opinion, has a relationship in the nature of marriage with that person (whether they are of opposite sexes or the same sex, and even if they are not able to be legally married to each other); and 15

“(b) in the company’s opinion, is not living apart from that person

“**rent period**, in relation to any HNZ housing, means a period in respect of which the tenant is required by the tenancy agreement to pay rent for it 20

“**tenant**, in relation to any HNZ housing, means the person or people to whom the housing is let.

“43 **Income-related rent**

“(1) This subsection applies to HNZ housing and a tenant if—

“(a) the tenant has applied to the company for it to calculate an income-related rent for the housing; and 25

“(b) the company is satisfied that—

“(i) it has had all information reasonably needed to calculate such a rent for the housing for long enough to be able to do so; and 30

“(ii) the information is accurate.

“(2) If **subsection (1)** applies to any HNZ housing and a tenant, the rent for the housing on or after the appointed day must be no higher than the income-related rent for the time being calculated for the tenant. 35

“(3) If **subsection (1)** does not apply to any HNZ housing and a tenant, the rent for the housing on or after the appointed day must be no higher than its market rent for the time being.

“(4) **Subsection (2)** is subject to **sections 49(2) and 50(4)**.

“(5) **Subsections (2) and (3)** are subject to **section 45**.

“44 **Backdating**

“(1) The company may treat an application made at any time to it for it to calculate an income-related rent for any HNZ housing as having been made at any earlier time it determines, if satisfied that— 5

“(a) it has all information reasonably needed to calculate an income-related rent for the housing as at the time determined; and 10

“(b) the information is accurate; and

“(c) it was unreasonable in all the circumstances to expect the application to have been made earlier.

“(2) This subsection applies to an application made to the company for it to calculate an income-related rent for any HNZ housing if,— 15

“(a) at the time it was made, the company—

“(i) did not have all information reasonably needed to calculate an income-related rent for the housing; or 20

“(ii) had all information reasonably needed to calculate an income-related rent for the housing, but was not satisfied that it was accurate; and

“(b) at some later time the company is satisfied that— 25

“(i) it has all that information; and

“(ii) the information is accurate.

“(3) The company may treat an application to which **subsection (2)** applies as if the company had had all information reasonably needed to calculate an income-related rent for the housing concerned at any time it determines between the time the application was made and the later time concerned. 30

“45 **Changes in rent**

“(1) This subsection applies to an existing tenant of HNZ housing if the company—

“(a) is required by **section 43** to reduce the rent for the housing; or 35

- “(b) is empowered by **section 43 or section 49(2) or section 50(4)** to increase the rent for the housing, and decides to do so.
- “(2) The company must, in accordance with section 136 of the Residential Tenancies Act 1986, give a tenant to whom **subsection (1)** applies written notice of the reduction or increase in rent concerned, stating— 5
- “(a) the day on which it takes effect (being a day no earlier than the commencement of the first rent period commencing after the appointed day); and 10
- “(b) the matters referred to in paragraphs (j) and (k) of section 13A of that Act.
- “(3) In the case of an increase in rent, the notice must comply with section 24 of the Residential Tenancies Act 1986.
- “(4) In the case of a reduction in rent, the notice has effect as a variation of the tenancy agreement for the housing, whether or not the tenant signs it. 15
- “46 **Calculation mechanism**
- “(1) The Governor-General may, by Order in Council, make regulations for all or any of the following purposes: 20
- “(a) prescribing a means for calculating income-related rents for tenants of HNZ housing by reference to—
- “(i) the incomes of the applicable persons concerned; and
- “(ii) levels of benefits or of 1 or more particular benefits; and 25
- “(iii) the market rent of the housing:
- “(b) prescribing, for the purpose of calculating income-related rents for tenants of HNZ housing,—
- “(i) a means for calculating household incomes for those tenants; or 30
- “(ii) a means for calculating incomes for the applicable persons concerned; or
- “(iii) both:
- “(c) prescribing, for the purpose of calculating household incomes for tenants, a means for estimating their incomes: 35

- “(d) prescribing, for the purpose of calculating incomes for applicable persons, a means for estimating their incomes:
- “(e) prescribing amounts or items of any kind or description that must be taken into consideration or excluded from consideration in the course of any element of the calculation or estimation of the incomes of applicable persons or tenants (or applicable persons or tenants of any kind or description): 5
- “(f) prescribing assets of any kind or description— 10
  - “(i) that are assessable assets for the purposes of the regulations; or
  - “(ii) that are assessable assets for the purposes of the regulations when held by applicable persons of a prescribed kind or description: 15
- “(g) prescribing—
  - “(i) a means for calculating an imputed income for the assessable assets of applicable persons or tenants (or applicable persons or tenants of any kind or description); and 20
  - “(ii) the extent (if any) to which that imputed income is to be taken into account (in place of or in addition to the actual income from those assets) in calculating or estimating the incomes of those applicable persons or the household incomes of those tenants: 25
- “(h) prescribing minimum levels of assessable assets to be taken into account in calculating or estimating the incomes of applicable persons or household incomes of tenants: 30
- “(i) prescribing minimum levels of imputed income to be taken into account in calculating or estimating the incomes of applicable persons or household incomes of tenants:
- “(j) empowering the company to treat the deprivation concerned as not having occurred or as having occurred to some lesser extent (and calculate and estimate an income or household income accordingly) if satisfied that— 35

- “(i) an applicable person has directly or indirectly deprived himself or herself of any income or property; and
  - “(ii) as a consequence of the deprivation, an income-related rent of any HNZ housing in respect of which the person is an applicable person is lower than it would otherwise be: 5
- “(k) providing for any other matters—
  - “(i) reasonably necessary to implement and administer fairly and efficiently a system enabling tenants of HNZ housing to pay rents calculated by reference to the matters referred to in **paragraph (a)**; or 10
  - “(ii) contemplated by this Part, necessary for its administration, or necessary for giving it full effect. 15
- “(2) For the purposes of **subsection (1)**, a means for calculating may comprise any number of mechanisms and parameters.
- “(3) The regulations (and any regulations under **section 47**) may treat people (including prospective tenants, people who might be applicable persons in relation to those prospective tenants, and other people who might reside in the housing concerned) differently on the basis of their marital status, disability, absence of disability, age, or family status (as the terms **marital status**, **disability**, **age**, and **family status** are defined in paragraphs (b), (h), (i), and (l) of section 21(1) of the Human Rights Act 1993), or on the basis of 2 or more of those factors. 20 25
- “(4) **Subsection (3)** overrides the Human Rights Act 1993.
- “(5) **Subsections (3) and (4)** are for the avoidance of doubt.
- “47 **Regulations for effecting savings and providing for certain transitional matters** 30
- “(1) **Subsection (2)** applies to a tenant of HNZ housing if, but for this section,—
  - “(a) the rent that the tenant would be required to pay for the first rent period commencing on or after the appointed day— 35
  - would be greater than—
  - “(b) the rent (after the deduction of any accommodation supplement or tenure protection allowance under the Social Security Act 1964, or amount payable by way of

special assistance under the special transfer allowance programme approved under section 124(1)(d) of that Act, or accommodation benefit under regulations under section 303 of the Education Act 1989, to which the tenant was entitled) that the tenant was required to pay for the last rent period commencing before the appointed day. 5

“(2) The Governor-General may, by Order in Council, make regulations for either or both of the following purposes:

“(a) modifying, phasing in, or postponing the application of **section 43(2)** to tenants to whom this subsection applies, or particular categories of tenants to whom this subsection applies: 10

“(b) prescribing 1 or more means by which the rents to be paid by tenants to whom this subsection applies, or particular categories of tenants to whom this subsection applies, may be calculated. 15

“(3) Regulations under **subsection (2)** override **section 43(2)**.

“48 **Tenant’s duty to advise changes of circumstances**

“(1) Every person to whom any HNZ housing is let at an income-related rent must promptly advise the company of— 20

“(a) any change in the person’s circumstances likely to result in the payment of a higher income-related rent; and

“(b) any change known to the person in the circumstances of any other applicable person likely to result in the payment of a higher income-related rent. 25

“(2) A person does not commit an offence by reason only of failing to comply with **subsection (1)**.

“49 **Reviews of income-related rents** 30

“(1) The company may at any time, of its own motion or on application by the tenant concerned, review any income-related rent to ascertain—

“(a) whether it or some other income-related rent is now appropriate for the housing concerned; or 35

“(b) whether at some earlier time it or some other income-related rent was appropriate for the housing concerned; or

- “(c) both.
- “(2) After reviewing the rent, the company,—
  - “(a) if satisfied that some other income-related rent is now appropriate for the housing concerned, may calculate and charge that other rent for the tenant: 5
  - “(b) if satisfied that at some earlier time a higher income-related rent was appropriate for the housing concerned, may take action under **section 52**:
  - “(c) if satisfied that at some earlier time a lower income-related rent was appropriate for the housing concerned, must make any necessary refund. 10
- “(3) The company—
  - “(a) does not have to act under **subsection (2)(a)** unless, in the company’s opinion, it would result in a material difference to the rent to be paid for the housing concerned; and 15
  - “(b) does not have to act under **subsection (2)(b)** unless, in the company’s opinion, there has been a material underpayment of rent for the housing concerned.
- “50 **Investigation of applications, etc** 20
- “(1) The company may investigate—
  - “(a) the present circumstances of—
    - “(i) any tenant of HNZ housing who is paying, or has applied to the company for the company to calculate, an income-related rent for the housing; or 25
    - “(ii) any person who is an applicable person in relation to the tenant:
  - “(b) the present circumstances of—
    - “(i) any prospective tenant of HNZ housing who has applied to the company for the company to calculate an income-related rent for the housing; or 30
    - “(ii) any person who will become an applicable person in relation to the prospective tenant if the prospective tenant becomes a tenant:
  - “(c) the circumstances (as they existed immediately before the income-related rent concerned was calculated or during any period when it was applicable) of— 35

- “(i) any tenant or former tenant of HNZ housing who was required to pay an income-related rent for the housing; or
  - “(ii) any person who was an applicable person in relation to the tenant or former tenant at the time concerned. 5
- “(2) For the purposes of **subsection (1)**, the company—
  - “(a) may ask any person whose circumstances it may investigate under that subsection any relevant questions it thinks fit; and 10
  - “(b) may ask any person whose circumstances it may investigate under that subsection to verify by statutory declaration—
    - “(i) any information he or she has given when answering questions asked under **paragraph (a)**; or 15
    - “(ii) any other information that he or she has at any time given to the company; or
    - “(iii) any information within his or her personal knowledge that any of the applicable persons concerned has at any time given to the company. 20
- “(3) The company may take either of the actions stated in **subsection (4)** if—
  - “(a) any person whose circumstances it may investigate under **subsection (1)**—
    - “(i) fails or refuses to answer (or, in the company’s opinion, fails or refuses to answer fully) any question asked under **subsection (2)(a)**; or 25
    - “(ii) fails or refuses to verify any information by statutory declaration when asked to do so under **subsection (2)(b)**; or 30
  - “(b) it believes on reasonable grounds that any person whose circumstances it may investigate under **subsection (1)** has wilfully given a false or misleading answer to any question asked under **subsection (2)(a)**.
- “(4) The actions are— 35
  - “(a) calculate an income-related rent for the tenant concerned on the basis of its own understanding of the circumstances; or
  - “(b) treat the market rent for the housing concerned as the income-related rent for the tenant. 40

- “51 Company may seek information**
- “(1)** For the purposes of a review under **section 49** or an investigation under **section 50**, the company may request any person to—
- “(a)** answer questions; or 5
  - “(b)** allow the company to inspect any document or other written information; or
  - “(c)** give the company—
    - “(i)** a copy of any document or other written information; or 10
    - “(ii)** a print-out of any information stored digitally.
- “(2)** The person does not have to comply with the request; but (for the purposes of **section 7(1)** of the Privacy Act 1993) this subsection authorises the person to make personal information available in response to the request. 15
- “52 Recovery where rate of rent too low**
- “(1)** **Subsection (2)** applies to a tenant of HNZ housing and a period of time if, at any later time, the company—
- “(a)** has in its possession information (whether or not obtained as a result of a review under **section 49** or an investigation under **section 50**) that— 20
    - “(i)** it did not have during that period, or had but did not have reasonable grounds to believe; and
    - “(ii)** it now believes on reasonable grounds; and
  - “(b)** is satisfied that, if it had had the information before the period and had had reasonable grounds to believe the information, it would have required the tenant to pay an income-related rent higher than the income-related rent the tenant was in fact required to pay for the housing in respect of the period. 25 30
- “(2)** If this subsection applies to a tenant of HNZ housing and a period of time, the company may calculate, and recover as a debt due to the Crown, the difference between—
- “(a)** the higher income-related rent it would have required the tenant to pay for the housing in respect of the period; and 35
  - “(b)** the income-related rent the tenant was in fact required to pay for the housing in respect of the period.

“(3) Amounts recoverable under **subsection (2)** are not rent in arrear for the purposes of the Residential Tenancies Act 1986.

“53 **Rights of appeal**

“(1) The Governor-General may, by Order in Council, make regulations for all or any of the following purposes: 5

“(a) conferring, and providing for, rights of appeal in relation to decisions of the company under this Part:

“(b) either—

“(i) establishing a body to hear and dispose of appeals, prescribing how its members are to be appointed and hold office, and prescribing how it is to hear and dispose of appeals made to it; or 10

“(ii) providing that appeals are to be made to the Social Security Appeal Authority established by the Social Security Act 1964 or a District Court, and providing for sections 12J to 12O of the Social Security Act 1964 or (as the case requires) the District Courts Act 1947 and rules made under it to apply, with or without modification, to the hearing and disposal of appeals: 15 20

“(c) providing for any other matters contemplated by this subsection, necessary for its administration, or necessary for giving it full effect.

“(2) Nothing in **subsection (1)**, or in any regulations made under it, limits or affects the rights of tenants of HNZ housing under the Residential Tenancies Act 1986. 25

“(3) Any body established under **subsection (1)(b)(i)** is a statutory Board within the meaning of the Fees and Travelling Allowances Act 1951; and every member of it is entitled to receive— 30

“(a) remuneration by way of fees, salary, or allowances, for the member’s services as a member of it:

“(b) payment of travelling allowances or expenses in respect of time spent travelling in its service.

“54 **Allocation of HNZ housing** 35

“(1) The things to which the company may have regard in doing either or both of the things stated in **subsection (2)** may include criteria that have, or are capable of having, the effect that

people (including prospective tenants, people who might be applicable persons in relation to those prospective tenants, and other people who might reside in the housing concerned) are treated differently on the basis of—

- “(a) their marital status, disability or absence of disability, age, or family status (as the terms **marital status**, **disability**, **age**, and **family status** are defined in paragraphs (b), (h), (i), and (l) of section 21(1) of the Human Rights Act 1993); or 5
  - “(b) whether or not they are resident, or ordinarily resident, or permanently resident, or lawfully resident, in New Zealand; or 10
  - “(c) their incomes; or
  - “(d) their property; or
  - “(e) 2 or more of those factors. 15
- “(2) The things are—
- “(a) assess the eligibility of prospective tenants to be allocated HNZ housing; and
  - “(b) allocate, assign, and let HNZ housing to prospective tenants. 20
- “(3) **Subsection (1)** overrides the Human Rights Act 1993.
- “(4) This section is for the avoidance of doubt.
- 55 Delegation of powers under this Part**
- “(1) The company—
- “(a) cannot delegate a power under **section 49(2)(b)**, any of **subsections (2)(b), (3), or (4) of section 50**, or **section 52**, except to a person who is an employee of the company; and 25
  - “(b) cannot delegate any other power under this Part or the calculation mechanism except to a person who is— 30
    - “(i) an employee of the company; or
    - “(ii) a person engaged by the company under a contract for services providing for the person to exercise that power.
- “(2) If the company delegates a power under this Act (not being a power referred to in **subsection (1)(a)**) to a body corporate engaged by the company under a contract for services,— 35
- “(a) the body corporate cannot subdelegate it except to a person who is an employee of the body corporate; and

- “(b) an employee of the body corporate to whom it is sub-delegated cannot subdelegate it further.
- “(3) **Subsections (1) and (2)** override section 130(1) of the Companies Act 1993.
- “56 **Reimbursement of company** 5  
 Section 7 has effect as if—
- “(a) this Part were a requirement by the Crown for the company to enter into agreements (as the circumstances from time to time require) for the provision by the company of housing and related services to persons who are required to pay income-related rents rather than market rents for the housing, in return for the payment by the Crown of the price to the company of doing so; and 10
- “(b) that price were the difference between the amounts of market rents for the housing and the income-related rents charged.” 15
- 6 New Schedule 2 added**
- The principal Act is amended by adding, as **Schedule 2**, the schedule set out in **Schedule 1** of this Act. 20
- 7 Consequential amendments, repeals, and revocations**
- (1) The enactments specified in **Schedule 2** are amended in the manner indicated in that schedule.
- (2) Sections 12J(2)(c), 53A(1)(d), and 61FA to 61FD, and Part III of the Eighteenth Schedule, of the Social Security Act 1964 are repealed. 25
- (3) Subparagraphs (xii) and (xiii) of paragraph (a) of the definition in section 80B of the Social Security Act 1964 of **income** are repealed.
- (4) Regulation 9(2) of the Student Allowances Regulations 1998 is amended by inserting, before paragraph (a), the following paragraph: 30  
 “(aa) students who are tenants (within the meaning of **section 42** of the Housing Restructuring Act 1992):”
- (5) The Social Security (Rent Rebate) Order 1992 (SR 1992/296) is revoked. 35

- (6) Until the first day on or after the appointed day that is the first day of a rent period, the following enactments continue to apply to a tenant of HNZ housing as if they were still in force in relation to the tenant:
- (a) sections 61E to 61EC, 61FC, and 61FD, and the Eighth Schedule, of the Social Security Act 1964: 5
  - (b) regulation 9 of the Student Allowances Regulations 1998.
- (7) In **subsection (6)**, terms defined in **section 42** of the principal Act have the meanings given to them by that section. 10
-

**Schedule 1**  
**New Schedule 2 of principal Act**  
**Schedule 2**  
**Calculation mechanism**

s 6

- 1 Interpretation** 5
- In this schedule, unless the context otherwise requires,—
- additional resident**, in relation to any HNZ housing, means a person aged 16 years or over who—
- (a) is financially independent; and
  - (b) resides in the housing; but 10
  - (c) is not an applicable person
- assessable income** has the meaning given to it by **clause 5**
- contributions** means payments made by an additional resident of any HNZ housing—
- (a) as a contribution towards the costs and expenses 15  
incurred by the applicable persons in residing there; or
  - (b) in consideration of goods or services provided by the  
applicable persons while the additional resident is  
residing there; or
  - (c) in consideration of the additional resident's being 20  
allowed to reside there
- financially independent** has the same meaning as in section 3(1) of the Social Security Act 1964
- income-related purpose** has the same meaning as in section 25  
3(1) of the Social Security Act 1964
- standard tax** has the same meaning as in section 13A(1) of the Social Welfare (Transitional Provisions) Act 1990
- study grant** means a basic grant or independent 30  
circumstances grant under regulations under section 303 of the Education Act 1989 (or an allowance, award, bursary, grant, or scholarship that the company considers to have been established under that section in place of a basic grant or independent circumstances grant).
- Calculating income-related rents*
- 2 Calculating income-related rents** 35
- (1) The income-related rent for any HNZ housing (calculated on a weekly basis) is the higher of the following rents:

- (a) a rent calculated by reference to household income under **subclause (2)**;
- (b) a rent calculated by reference to benefit levels under **subclause (3)**.
- (2) A rent calculated by reference to household income is the sum of— 5
- (a) 25% of the sum of the assessable incomes of the applicable persons concerned, up to the appropriate threshold; and
- (b) 50% of any amount by which that sum is greater than the appropriate threshold; and 10
- (c) if any of the applicable persons is eligible to receive family support under Subpart KD of the Income Tax Act 1994, 25% of the lesser of—
- (i) the total of the amounts that the applicable persons are eligible to receive as family support under that Subpart; and 15
- (ii) the maximum rate of family support payable under that Subpart in respect of an eldest dependent child who is under 16. 20
- (3) A rent calculated by reference to benefit levels is the sum of—
- (a) 25% of the rate (before abatement) stated in paragraphs (a) to (j) of clause 1 of the Ninth Schedule of the Social Security Act 1964 that would be appropriate if the tenant were a beneficiary; and 25
- (b) if any of the applicable persons is eligible to receive family support under Subpart KD of the Income Tax Act 1994, 25% of the lesser of—
- (i) the total of the amounts that the applicable persons are eligible to receive as family support under that Subpart; and 30
- (ii) the maximum rate of family support payable under that Subpart in respect of an eldest dependent child who is under 16.
- (4) The income-related rent for any HNZ housing must not exceed its market rent. 35
- (5) **Subclause (4)** overrides **subclause (1)**.

**3 Thresholds**

For the purposes of **paragraphs (a) and (b) of clause 2(2)**, the appropriate threshold for any HNZ housing,—

- (a) in the case of a sole tenant who has no partner and no dependent children (within the meaning of section 3(1) of the Social Security Act 1964), is the rate stated in clause 1(a) of the First Schedule of the Social Welfare (Transitional Provisions) Act 1990, after deduction of standard tax; and 5
- (b) in every other case, is the rate stated in clause 1(c) of the First Schedule of the Social Welfare (Transitional Provisions) Act 1990, after deduction of standard tax, multiplied by 2. 10

**4 Assessable incomes**

(1) The assessable income of an applicable person is the company's estimate if the person's weekly income from all sources,— 15

- (a) if any income tax is payable on any of it, after the deduction of the greater of any tax actually deducted and the amount of standard tax deductible from it; and 20
- (b) if any levy and premium are payable in respect of any of it under subsections (1) and (2) of section 283(1) of the Accident Insurance Act 1998, after the deduction of—
  - (i) the greater of any amount of levy actually paid and the amount of levy payable; and 25
  - (ii) the greater the amount of any premium actually paid and the amount of the premium payable.

(2) **Clause 12** overrides **subclause (1)**.

**5 Amounts included in weekly income**

(1) For the purposes of **clause 4**, a person's weekly income— 30

- (a) includes the appropriate weekly proportion of every amount or payment received as—
  - (i) an income-tested benefit (within the meaning of section 3(1) of the Social Security Act 1964) other than an orphan's benefit or an unsupported child's benefit; or 35
  - (ii) New Zealand superannuation or a veteran's pension under the Social Welfare (Transitional Provisions) Act 1990; or

- (iii) a study grant; and
- (b) includes amounts received from an insurer under the Accident Insurance Act 1998 as weekly compensation for loss of earnings or potential earning capacity; and
- (c) includes the appropriate weekly proportion of any periodical payment, whether capital or not, made to the person on a regular basis by any other person for income-related purposes and used by the person for income-related purposes; and
- (d) includes the appropriate weekly proportion of the value of any goods, service, transport, or accommodation (other than accommodation provided by the company) supplied to the person on a regular basis by any other person.
- (2) For the purposes of **clause 4**, a person's weekly income also includes any family tax credit that the person is eligible for under Subpart KD of the Income Tax Act 1994.
- (3) For the purposes of **clause 4**, a person's weekly income includes an amount or payment made to or for the benefit of the person by an additional resident to the extent only required by **clauses 7 to 10**.
- (4) **Subclauses (1) and (2)** do not limit the generality of **clause 4**.
- 6 Amounts excluded from weekly income**
- (1) For the purposes of **clause 4**, a person's weekly income does not include an amount or payment—
- (a) received as a benefit, allowance, or other payment under the Social Security Act 1964 not included under **clause 5(1)(a)**; or
- (b) received as a parental tax credit or child tax credit under Subpart KD of the Income Tax Act 1994; or
- (c) of a kind stated in any of subparagraphs (ii) to (xv) of paragraph (f) of the definition of **income** in section 3(1) of the Social Security Act 1964.
- (2) **Subclause (1)** is not exhaustive.

*Provisions relating to additional residents*

- 7 Application**  
This clause applies to HNZ housing if, and only if, in the company's opinion, the applicable persons' principal source of income is contributions from additional residents. 5
- 8 Applicable persons whose principal source of income is contributions from additional residents**  
If **clause 7** applies to HNZ housing, the weekly income of the applicable persons includes all contributions from additional residents. 10
- 9 Other households with fewer than 3 additional residents**  
If **clause 7** does not apply to HNZ housing and the applicable persons receive contributions from fewer than 3 additional residents, their weekly income does not include any contributions from additional residents. 15
- 10 Other households with 3 or more additional residents**  
If **clause 7** does not apply to HNZ housing and the applicable persons receive contributions from 3 or more additional residents, their weekly income—  
(a) does not include any contributions from the 2 additional residents making the greatest contributions; and 20  
(b) includes only 62% of the sum of the contributions from the other additional resident or residents.

*Assessable assets, and deprivation of income or property*

- 11 Assessable assets** 25
- (1) For the purposes of **subclause (2)**, assessable assets held by a person generate imputed income at a rate of interest for the time being prescribed by the shareholding Ministers by notice in the *Gazette*.
- (2) For the purposes of **clause 4**,— 30
- (a) the gross income from any person's assessable assets is the greater of the actual income from those assets and the imputed income they generate; and

- (b) the person's weekly income must be estimated accordingly.
- (3) **Cash assets** within the meaning of section 61E of the Social Security Act 1964 are assessable assets for the purposes of this schedule. 5

*Estimating weekly income*

**12 Estimating weekly income**

For the purposes of **clause 4**, a person's weekly income is the person's estimated income for the period of 52 weeks commencing on the day on which the estimation is made (or in the case of an application backdated under **section 44** or a review under **section 49** or action taken under **section 50(4)**, the day from which the estimation is made), divided by 52; but— 10

- (a) that estimated income must be treated as an amount equal to— 15
- (i) the income received by the person for any period of 52 weeks (ending on a day before the day concerned) that the company decides, divided by 52; or
- (ii) if the company thinks it more appropriate in all the circumstances, the income received by the person for a period of less than 52 weeks (ending on a day before the day concerned) that the company decides, divided so as to equate to a weekly amount; and 20 25
- (b) there may be deducted from that amount any items by which the company is satisfied the income is likely to be reduced, and there may be added to that amount any items by which the company is satisfied the income is likely to be increased. 30

**13 Assessable income may be adjusted in certain cases**

- (1) If satisfied that—
- (a) an applicable person has directly or indirectly deprived himself or herself of any income or property; and
- (b) as a consequence of the deprivation, an income-related rent of any HNZ housing in respect of which the person is an applicable person is (or but for this section would be) lower than it would otherwise be,— 35

the company may treat the person's assessable income as having been increased to the extent the company thinks necessary to reflect the deprivation, or any lesser extent.

- (2) **Subclause (1)** overrides **clauses 4 and 12**.
-

s 7(1)

## Schedule 2

### Enactments amended

#### Residential Tenancies Act 1986 (1986 No 120)

Insert in section 25(3), after the word “rents”, the words “(other than income-related rents within the meaning of **section 42** of the Housing Restructuring Act 1992)”. 5

#### Social Security Act 1964 (1964 No 136)

Repeal subparagraphs (va) to (viii) of paragraph (b) of the definition in section 3(1) of **benefit** and substitute:

“(v) a disability allowance payable under section 69C; but”. 10

Omit from paragraph (d) of the definition in section 3(1) of **financially independent** the words “this Part of”.

Add to paragraph (f) of the definition in section 3(1) of **income**:

“(xvi) any income-related rent within the meaning of **section 42** of the Housing Restructuring Act 1992:”. 15

Omit from section 61E(1) the expression “61EC, 61FA, 61FB, 61FC, and 61FD”, and substitute the expression “and 61EC”.

Omit from section 61H(1) the words “average regional rental,”. 20

Omit from section 61H(2) the words “average retail rentals,”.

Repeal paragraphs (a) and (aa) of the definition in section 61E(1) of **accommodation costs** and substitute:

“(a) in relation to premises rented by the person, the total cost, excluding arrears, of the premises to the person:”. 25

Repeal section 61EA(2) and substitute:

“(2) No person is eligible for an accommodation supplement whose accommodation costs include—

“(a) payments, required to be made under a mortgage security to the Housing Corporation of New Zealand or the Crown in right of the Ministry of Maori Development, that in the chief executive’s opinion are required to be made at a concessionary rate; or 30

“(b) rent paid in respect of premises (whether owned by the Crown, the company, or any other person) let by or on behalf of the company for occupation by any person as a place of residence. 35

**Social Security Act 1964** (1964 No 136)—continued

“(2A) In **subsection (2)**, **company** has the same meaning as in the  
Housing Restructuring Act 1992.”

Omit from section 72(a) the expression “61FA, 61FC”.

**Social Welfare (Transitional Provisions) Act 1990**

5

(1990 No 26)

Omit from the definition in section 13A(1) of **standard tax** the  
expression “G” and substitute the expression “M”.